EXECUTORS — TRUSTEES — DOUBLE COMMISSIONS. — The executors under a will were directed, among other things, to invest the estate and to turn over to a legatee the income and parts of the *corpus* of the estate at stated intervals during a period of more than twenty years. The will made no division between their trust duties and their functions as executors. A subsequent court decree allowed the executors to continue as such with respect to the realty, and as trustees with respect to the personalty. *Held*, that the executors were not entitled to double commissions on the transfer to themselves as trustees of the proceeds from the sale of realty. *In re Ziegler*, 218 N. Y. 544, 113 N. E. 553.

In New York the rule is that double commissions will not generally be granted to an executor who also serves as trustee. *Valentine* v. *Valentine*, 2 Barb. Ch. 430; *McAlpine* v. *Potter*, 126 N. Y. 285, 27 N. E. 475. Nor will a court decree terminating the executorship and declaring a continuation of the duties as trustee affect the rule. *Johnson* v. *Lawrence*, 95 N. Y. 154. But an exception is made if the terms of the will clearly indicate a point where the duties as executor end and those as trustee begin. *Olcott* v. *Baldwin*, 190 N. Y. 99, 82 N. E. 748; *Laytin* v. *Davidson*, 95 N. Y. 263. Other jurisdictions, in general, determine the right to double commissions by the substance of the work actually done. *Pitney* v. *Everson*, 42 N. J. Eq. 361, 7 Atl. 860; *Lyon* v. *Bird*, 79 N. J. Eq. 157, 80 Atl. 450; *Kennedy* v. *Dickey*, 99 Md. 295, 57 Atl. 621; *Albro* v. *Robinson*, 93 Ky. 195, 19 S. W. 587. This would seem to be the more equitable test. It is difficult to see why the testator's intent or the chance phrasing of a will should deprive the executor of additional payment as trustee where it is clear that he is acting in both capacities.

INSURANCE — CONSTRUCTION AND OPERATION OF CONDITIONS — VALIDITY UNDER "SUICIDE STATUTE" OF REDUCED RECOVERY FOR DEATH BY POISON. — A life insurance company issued a policy containing a provision that in the event of death by poisoning the beneficiary should recover only one fifth of the face value of the policy. The insured committed suicide by taking poison. A statute provides that suicide shall be no defense in a suit upon a policy of insurance, and that any provision in a policy to the contrary shall be void. 1909 MISSOURI REV. STAT., § 6945. The beneficiary seeks to recover the face value of the policy. *Held*, that she may recover only one fifth of the face value. *Scales* v. *Nat. Life & Accident Ins. Co.*, 186 S. W. 948 (Mo. App.).

Under the Missouri statute a provision in a life insurance policy reducing recovery in case of death by suicide is held to be void since it makes suicide a partial defense. *Keller* v. *Travelers' Ins. Co.*, 58 Mo. App. 557; *Whitfield* v. *Aetna Life Ins. Co.*, 205 U. S. 489. Likewise any provision discriminating in any way against recovery for suicide would seem void. In the principal case, however, the clause does not mention suicide but makes the physical cause of death the basis of reduced recovery. *Primâ facie* this is clearly not within the purview of the statute. If it should appear in a particular case that by such a clause a company is really cloaking a discrimination against recovery for self-destruction, it should of course be held void. But to deny the validity of such a provision upon the ground that the death was incidentally a suicide would be to prefer recovery for a suicidal death by poison over recovery for any other death by poison. This construction would give to the statute an effect affirmatively favoring recovery for suicide. Such a construction would seem abnormal, being entirely counter to the policy of the common law; for insurance against suicide has long been held void at common law. See *Moore* v. *Woolsey*, 4 El. & Bl. 243, 254; *Ritter* v. *Mut. Life Ins. Co.*, 169 U. S. 139, 154. This so-called suicide legislation is of doubtful public policy under any construction, as it tends to restrain freedom of contract and removes a deterrent from suicide. To extend the effect of such a statute beyond its normal scope would seem deplorable. Another Missouri court of appeals had, how-

ever, made this extension on facts exactly similar to those of the principal case. *Applegate* v. *Travelers' Ins. Co.*, 153 Mo. App. 63, 132 S. W. 2. But the court in the principal case seems to have reached a more desirable result in refusing to follow this decision.

INTERSTATE COMMERCE — JURISDICTION OF COMMISSION — COMMON CARRIER. — A corporation was chartered for the purpose of doing an interstate freight business between ports connected by no existing steamship line. The stock was subscribed to conditionally upon the declaration by the Interstate Commerce Commission of rates favorable to the enterprise. Before it had acquired any boats or terminal facilities the company brought its complaint under the Panama Canal Act of 1912, amending the Act to Regulate Commerce, and asked that the Commission require the railroads named as defendants to establish and maintain proportional freight rates, that is, rail rates applicable to through rail and water shipments lower than the local rail rates to the port of loading on vessels. *Held*, that the complaint be dismissed. *Charleston & Norfolk S. S. Co.* v. *Chesapeake & Ohio Ry. Co.*, 40 Int. Com. Rep. 383.

A hardship has apparently resulted to a corporation which seeks in good faith to learn under what rates it will be allowed to do business before spending further funds in an enterprise the success of which depends upon those rates. But the decision that the complainant is not a "common carrier engaged in," etc. and therefore not within the Commission's jurisdiction seems to be a correct interpretation of the terms of the Act to Regulate Commerce. 24 STAT. AT LARGE, 379. The amendment in question does not increase the agencies over which the Commission shall have jurisdiction. It only confers special powers relative to through rail and water carriage. 37 STAT. AT LARGE, 568. And yet the tenor of the Commission's opinion is noticeably different from that of at least two earlier decisions not under this amendment. *Flour City S. S. Co.* v. *Lehigh Valley R. Co.*, 24 Int. Com. Rep. 179; *Suffern Grain Co.* v. *Illinois Central R. Co.*, 22 Int. Com. Rep. 178. In public service regulation by the states the same difficulty in terms exists. Since 1910 several legislatures have included specifically within the jurisdiction of the commissions established corporations organized for public service but as yet transacting no business and acquiring no property. 8 BIRDSEYE, 2153 (1910 N. Y.); PAGE & ADAMS ANN. GEN. CODE, § 614–2*a* (1911 Ohio); 1911 NEW JERSEY LAWS, c. 195, § 15; DIST. COL. APPROPRIATION ACT OF MARCH 4, 1913, § 8, par. 1.

JUDGMENTS — COLLATERAL ATTACK — MISTAKE CONCERNING DEATH OF LEGATEE AS GROUND FOR ATTACK ON PROBATE DECREE. — A testator left a fund in trust to his widow for life, then equal shares to be given to each of his children "or their heirs." After the life estate the trustees under order of court deposited in a bank the share of the plaintiff legatee, one of the children. Later the court, erroneously believing the plaintiff legatee to be dead, decreed that the bank pay the fund to his heirs. Payment was made. The plaintiff now seeks to have the decree vacated and an order made against the bank. *Held*, that although the decree will be vacated, no liability will be imposed on the bank. *Jones* v. *Jones*, 223 Mass. 540.

Since the death of the testator is necessary to confer jurisdiction on the probate court a grant of probate of the estate of a living person is void, and the decree can afford no protection to one acting under it. *Scott* v. *McNeal*, 154 U. S. 34; *Jochumsen* v. *Suffolk Savings Bank*, 3 Allen (Mass.) 87. See 1 WOERNER, AMERICAN LAW OF ADMINISTRATION, § 208; 10 HARV. L. REV. 62. In the principal case, however, the probate court was administering a fund over which it had jurisdiction through the death of the plaintiff's testator. By the terms of the will, at the death of the life tenant the share in question was to go to the plaintiff or his heirs; and the court's mistake of fact as to the